

110 FERC ¶ 61,163
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 6, 2005

In Reply Refer To:
El Paso Electric Company
Docket No. ER05-201-000

El Paso Electric Company
123 West Mills
El Paso, TX 79901

Attention: John Whitacre
Vice President, T&D

Reference: Interconnection Agreement

Dear Mr. Whitacre:

1. On November 10, 2004, El Paso Electric Company (EPE) submitted pursuant to section 205 of the Federal Power Act, an executed Large Generator Interconnection Agreement (LGIA) between EPE and Public Service Company of New Mexico.
2. The Commission previously accepted EPE's pro forma LGIA submitted in compliance with Order No. 2003.¹ In the instant LGIA, EPE proposes two non-conforming provisions that are not present in EPE's pro forma LGIA. First, EPE has proposed to add a new sentence at the end of the definition of "Interconnection Facilities Study" in article I of the Interconnection Agreement to specify that the August 2003 Generation and Interconnection Facilities Study constitutes the Interconnection Facility Study for purposes of the Interconnection Agreement. Second, EPE has added the following sentence to article 5.14 of the Interconnection Agreement: "Each Party shall pursue with due diligence and maintain all necessary governmental approvals, permits, licenses and authorizations necessary for the performance of this Agreement."

¹ Arizona Public Service Co., 107 FERC ¶ 61,255 (2004).

3. Notice of EPE's filing was published in the *Federal Register*, 69 Fed. Reg. 68,895 (2004), with comments, protests, and interventions due on or before December 1, 2004. No protests or adverse comments were filed in this proceeding.

4. For agreements that contain provisions that do not conform to a Transmission Provider's Commission-approved pro forma LGIA, the Commission applies a case-specific analysis that examines the operational and other reasons that necessitate the nonconforming change. Here EPE has expressed no operational concerns or reasons that explain the need for the non-conforming changes to this particular LGIA. For example, while EPE proposes to add a new sentence to the end of the definition of "Interconnection Facility Study" to implement the transition to Order No. 2003, it has not explained why it is necessary to so amend the LGIA. Also, the proposed change to article 5.14 attempts to apply a legal standard ("due diligence") to obligations that are already subject to a legal standard established in article 14.1 ("Reasonable Efforts"). Therefore, we reject these nonconforming changes. Nevertheless, the Commission will conditionally accept the executed LGIA between EPE and Public Service Company of New Mexico, subject to EPE removing the additional language as discussed above and re-filing the LGIA, within 15 days of issuance of this order, to conform to the pro forma LGIA contained in EPE's Open Access Transmission Tariff, Attachment J. Waiver of the notice requirements, pursuant to section 35.11 of the Commission's regulations is granted, and the LGIA is accepted for filing effective November 2, 2004, as requested.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.